



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY SOUTHWEST REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor  
Director

Dallas R. Sizemore  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Mountain Materials Inc., a subsidiary of Oldcastle Inc.,  
a subsidiary of CRH PLC - Castlewood Plant  
Registration No. 10385**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309 and 10.1 – 1316, between the State Air Pollution Control Board and Mountain Materials, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, Regulations for the Control and Abatement of Air Pollution, and the amended New Source Review permit issued to Oldcastle Industrial Minerals on July 9, 2007.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 10.1-1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. “Facility” means Mountain Materials located at 49 Quarry Road, beside Rt. 58, Castlewood/Russell County, Virginia.

5. Mountain Materials” means Mountain Materials, Inc., a subsidiary of Oldcastle, Inc., a subsidiary of CRH PLC - Castlewood Plant, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parent. Mountain Materials is a “person” within the meaning of Va. Code § 10.1-1300. .
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
8. “Permit” means the amended New Source Review (NSR) permit to construct and operate additional screens at a stone crushing plant, which was issued under the Virginia Air Pollution Control Law and Regulations to Oldcastle Industrial Minerals on July 9, 2007.
9. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 Chapters 10-80.
10. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
11. “Va. Code” means the Code of Virginia (1950), as amended
12. “VAC” means the Virginia Administrative Code
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 et. seq.) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Facts and Conclusions of Law**

1. Mountain Materials owns and operates the Facility in Russell County, Virginia. The Facility crushes, screens, and processes stone into various products for various markets and is subject to the Permit.
2. On January 21, 2009 DEQ staff conducted a compliance evaluation of the Facility in response to a citizen complaint and to ensure compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observation:
  - a) Excessive fugitive dust emissions from the primary and secondary crushing operations from 11:40 A.M. until 12:00 noon.

3. Condition No. 3 of the Permit requires that:

"Fugitive emission controls shall include the following, or equivalent, as a minimum:

- a) Dust from drills, shot piles, material handling, screens, crushers, transfers, bagging operations, load-outs, and traffic areas shall be controlled by wet suppression or equivalent (as approved by the DEQ). There shall be no exemption from this requirement due to cold weather. The wet suppression spray systems shall be operated at optimum design.
- b) All material being stockpiled shall be kept adequately moist to control dust during storage and handling or covered at all times to minimize emissions.
- c) Dust from haul roads and traffic areas shall be controlled by the application of asphalt, water, suitable chemicals, or equivalent methods approved by the DEQ.
- d) Reasonable precautions shall be taken to prevent deposition of dirt on public roads and subsequent dust emissions. Dirt, product, or raw material spilled or tracked onto paved surfaces shall be promptly removed to prevent particulate matter from becoming airborne." (9 VAC 5-50-260 and 9 VAC 5-50-90)"

4. 9 VAC 5-50-90. Standard for fugitive dust/emissions., requires that:

"During the construction, modification or operation of a stationary source or any other building, structure, facility or installation, no owner or other person shall cause or permit any materials or property to be handled, transported, stored, used constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but are not limited to the following:

1. Used, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
2. Application of asphalt, water, or suitable chemicals on dirt roads, material stockpiles and other surfaces which may create airborne dust; the paving of roadways and the maintaining of them in a clean condition;
3. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations;

4. Open equipment for conveying or transporting materials likely to create objectionable air pollution when airborne shall be covered, or treated in an equally effective manner at all times when in motion; and
5. The prompt removal of spilled or tracked dirt or other materials from paved streets and or dried sediments resulting from soil erosion.”
5. 9 VAC 5-50-260 (A). Standard for stationary sources requires that:  
  
No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility and emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.
6. On February 6, 2009, based on the evaluation, the Department issued NOV No. 2-1-SWRO-2009 to Mountain Materials for the violation described in paragraph C (2) above.
7. On February 13, 2009, Mountain Materials Plant Manager, Josh Horne, contacted the Department in response to the NOV and to discuss the violation.
8. Based on the results of the January 21, 2009 evaluation, the Board concludes that Mountain Materials has violated condition No.3 of the Permit, and 9 VAC 5-50-90 and 9 VAC 5-50-260(A), as described in paragraphs C(3) through C(5) above.
9. Mountain Materials has since installed a water antifreeze system to be utilized in cold weather.

#### **SECTION D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders Mountain Materials and Mountain Materials voluntarily agrees:

1. To perform the actions described in Appendix A of this Order; and

To a civil charge of \$12,740 in settlement of the violations cited in this Order, to be paid as follows:

Mountain Materials shall pay \$3,185 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Mountain Materials shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

2. Mountain Materials shall satisfy \$9,555 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this order.
3. The net project cost of the SEP to Mountain Materials shall not be less than the amount set forth in Paragraph D.2. If it is, Mountain Materials shall pay the remaining amount in accordance with Paragraph D.1. of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g. tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contract, or grants shall be deducted.
4. By signing this Order Mountain Materials certifies that it has not commenced performance of the SEP.
5. Mountain Materials acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Mountain Materials to a third party, shall not relieve Mountain Materials of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, Mountain Materials shall state in a prominent manner that the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to:
  - a. Authorize any alternate SEP proposed by the Facility; and
  - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that Mountain Materials has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify Mountain Materials in writing. Within 30 days of being notified, Mountain

Materials shall pay the amount specified in Paragraph D.2. above, as provided in Paragraph D.1.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Mountain Materials for good cause shown by Mountain Materials, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mountain Materials admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mountain Materials consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mountain Materials declares it has received fair and due process under the Administrative Process Act and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend or enforce this Order.
6. Failure by Mountain Materials to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mountain Materials shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by

earthquake, flood, other act of God, war, strike, or such other occurrence. Mountain Materials must show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mountain Materials shall notify the DEQ Regional Director verbally within 24 hours with a follow-up in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective ~~upon execution by both the Director or his designee and Mountain Materials.~~ Nevertheless, Mountain Materials agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a) Mountain Materials petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b) the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Mountain Materials.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mountain Materials from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mountain Materials and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Mountain Materials certifies that he or she is a responsible official authorized to enter into terms and conditions of this Order and to execute and legally bind Mountain Materials to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mountain Materials.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.



15. By its signature below, Mountain Materials voluntarily agrees to the issuance of this Order.

And it is ORDERED this 10th day of June, 2009

Dallas W. Sizemore  
Dallas Sizemore, Regional Director  
Department of Environmental Quality

Mountain Materials voluntarily agrees to the issuance of this Order.

Date: 6/16/2009 By: Josh Horne,  
Josh Horne, Authorized Agent  
Mountain Materials Inc - Castlewood Plant

Commonwealth of Virginia

City/County of Russell

The foregoing document was signed and acknowledged before me this 16th day of  
June, 2009 by Josh Horne who is the Authorized Agent of  
Mountain Materials Inc., a subsidiary of Oldcastle Inc., a subsidiary of CRH PLC -  
Castlewood Plant, on behalf of the corporation.

Date: 6-16-09

Nancy L. High  
Notary Public

168613  
Registration No.

My commission expires: 12-31-09

Notary seal:

APPENDIX A  
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, Mountain Materials, Inc shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix

1. The SEP to be performed by Mountain Materials, Inc. is the installation of an additional fabric filter style dust collector at the fine grind facility as stated in letter from Mountain Materials, Inc. dated April 20, 2009. The installation of the fabric filter shall result in the collection of particulate matter from the mill bagging systems, two conveyors, floor clean-up, and function as a backup for the existing control system.
2. The SEP shall be completed within 60 days of the effective date of this Order.
3. Mountain Materials, Inc. shall submit progress reports on the SEP on a monthly basis, due the 15<sup>th</sup> day of each month.
4. Mountain Materials, Inc. shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified by a Certified Public Accountant or by responsible corporate officer or owner. Mountain Materials, Inc. shall submit the final report and certification to the Department within 90 days of the effective date of this Order.
5. If the SEP has not or cannot be completed as described in the Order, Mountain Materials, Inc. shall notify DEQ in writing no later than June 30, 2009, such notification shall include:
  - a. an alternate SEP proposal, or
  - b. payment of the amount specified in paragraph D.2., paid as to payment method, address and identification of payment as described in paragraph D. 1.
6. Mountain Materials, Inc. hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Mountain Materials, Inc. shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of invoices and proof of payment and a certified statement itemizing costs within 90 days of the effective date of this Order. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Mountain Materials, Inc.'s Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Crystal C. Bazyk  
Air Compliance Manager  
DEQ-SWRO  
PO Box 1688  
Abingdon VA 24212-1688

9. **Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Mountain Materials, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."